

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VERONICA GUTIERREZ,
TIM FOX, ERIN WALKER and
WILLIAM SMITH, as
individual, and on behalf
of all others similarly
situated,

Plaintiffs,

Case No. CV-07-5923
WHA (JCSx)

vs.

CERTIFIED
COPY

WELLS FARGO & COMPANY;
WELLS FARGO BANK, N.A; and
DOES 1 through 125,

Defendants.

DEPOSITION OF ERIN WALKER
REDLANDS, CALIFORNIA
FRIDAY, JUNE 13, 2008

Reported By:
PATRICIA Y. SCHULER
RPR, CSR No. 11949
Job No. 89824

ERIN WALKER

06/13/08

1 BY MS. WINNER:

2 Q. I would like to ask the reporter to mark as
3 Exhibit 131 a document entitled "Consumer Account
4 Agreement Effective October 2, 2006," Bates
5 No. WFB-G 844 to 911.

6 Would you take as much time as you need,
7 Ms. Walker. Just take a look at this document and
8 tell me if you recall whether you have ever seen it
9 before.

10 MR. MCCUNE: Just to assist her, this would
11 have been an agreement --

12 MS. WINNER: The original?

13 MR. MCCUNE: Yes.

14 MS. WINNER: It probably would have looked
15 something like this (indicating).

16 THE WITNESS: Okay. The question is, have I
17 ever seen it before?

18 BY MS. WINNER:

19 Q. Do you recall whether you have ever seen it
20 before?

21 A. Yes.

22 Q. When have you seen it before?

23 A. A few days ago.

24 Q. Under what circumstances did you see it a
25 few days ago?

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1 A. With my counsel.

2 Q. Do you recall whether you have seen it
3 before that?

4 A. No.

5 Q. By the way, when you were pulling together
6 documents to produce in this case, did you ever ask
7 your mother if she had any documents about your
8 account?

9 A. She would not, because it was mine.

10 Q. My question was, did you ask her whether she
11 had any documents about your account that you did not
12 talk about?

13 A. I did not.

14 (Exhibit 132 was marked for identification.)

15 BY MS. WINNER:

16 Q. I would like to ask the reporter to mark as
17 Exhibit 132 a document entitled "Consumer Account Fee
18 and Information Schedule Effective April 3, 2006."

19 Ms. Walker, do you recall whether you have
20 ever seen this document before?

21 A. Yes.

22 Q. And when do you recall last having seen it?

23 A. A few days ago.

24 Q. That is when you were meeting with your
25 counsel?

1 have an understanding about what an "overdraft" was?

2 A. No.

3 Q. Did you understand that there was any limit
4 on how much you could spend out of that account?

5 A. I assumed that it would be whatever was in
6 my account.

7 Q. What was the basis for that assumption?

8 A. If I don't have money, I can't spend money.

9 Q. Do you recall any discussion of that subject
10 that day?

11 A. No.

12 Q. Did you understand that if you had an
13 overdraft on your account, the bank would charge a few
14 for that?

15 A. No.

16 Q. When did you first come to understand that?

17 A. When I incurred an overdraft fee.

18 Q. Did you understand that you had a
19 responsibility to keep track of the money that you
20 spent out of the account?

21 A. Yes, I did.

22 Q. Did you write checks?

23 A. Not too often, but occasionally.

24 Q. When you did write checks, did you keep any
25 record of that?

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1 A. Like in a check record?

2 Q. Yes.

3 A. No. But I was aware that I had written a
4 check.

5 Q. So you just kept track of it mentally?

6 A. Um-hmm.

7 Q. That was a "yes"?

8 A. Yes.

9 Q. Did you do anything to keep track of debit
10 card transactions that you made?

11 A. I would periodically check online.

12 Q. What would you check for online?

13 A. I would check my available balance.

14 Q. Did you check to see whether the purchases
15 that you had made with your debit card showed up
16 online?

17 A. Yes.

18 Q. How often did you do that?

19 A. Fairly often.

20 Q. What do you mean by "fairly often"?

21 A. Almost before every purchase.

22 Q. So before a purchase you would look online
23 to see if all the other purchases you had made were
24 there?

25 A. I would check my available balance, and I

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1 would also check my purchase record.

2 Q. When you say your "purchase record," what do
3 you mean?

4 A. Whatever that tab is where the stuff breaks
5 down, it will always state, "You spent this much at
6 this location."

7 Q. Did you ever see if there were purchases you
8 had made that were not on what you refer to as your
9 "purchase record"?

10 A. I believe if the amount was in parentheses,
11 that was still pending.

12 Q. What did "pending" mean?

13 A. Pending means hadn't gone through yet.

14 Q. Did you ever notice sometimes that there
15 were some that weren't there at all?

16 A. Not specifically.

17 Q. Did you generally have any recollection of
18 that ever happening?

19 A. Yes.

20 Q. Did you do anything about that?

21 A. No.

22 Q. Did you believe that the bank knew about
23 checks you wrote before they were presented to the
24 bank for payment?

25 A. Can you rephrase that.

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1 Q. If you wrote a check, did you have an
2 understanding about whether or not the bank knew about
3 it as soon as you wrote it, or whether the bank would
4 not know about it until later?

5 A. Checks usually were -- you give it to the
6 institution and then they have to cash it before the
7 money is drawn from my account.

8 Q. The bank would not know about it until it
9 was cashed, correct?

10 A. I don't know what you mean by that.

11 Q. Well, did you assume that as soon as you
12 wrote a check, the bank knew about that check and was
13 taking it into account in your available balance?

14 A. No.

15 Q. You said you checked your account, you
16 checked your available balance.

17 How did you do that?

18 A. Online.

19 Q. Did you use any other method for that?

20 A. I don't think so.

21 Q. Do you have a computer at school with you?

22 A. Um-hmm, yes.

23 Q. And do you have one at home?

24 A. Yes.

25 Q. When did you enroll in online banking with

1 Q. Again, there, it says -- little -- about
2 halfway down the page under "Checking" it says,
3 "Available balance" and it provides an amount. Above
4 that it says, "Ending balance" and provides an amount.

5 Do you see that?

6 A. Right. Yes, I do.

7 Q. Are those things that you would look at?

8 A. Yes.

9 Q. Now, next to "Available balance" there is a
10 link that says, "What's this."

11 A. Um-hmm.

12 Q. Have you ever clicked on that link?

13 A. No. I knew what available balance meant.

14 Q. How did you know what available balance
15 meant?

16 A. Meaning money available.

17 Q. Well, how was it calculated?

18 A. Based off of my purchases.

19 Q. You said you knew, how did you come to know
20 that?

21 A. Seems simple enough.

22 Q. If you would turn to the next page, the very
23 top, there is a definition of "available balance." If
24 you would just read that to yourself.

25 A. Okay.

1 A. I don't know if they were in there at the
2 time.

3 Q. Are there any -- from your perspective, are
4 there any inaccuracies in either of these two
5 paragraphs?

6 A. I did not do any of the calculations. My
7 counsel did.

8 Q. So, for example, in the last sentence of
9 paragraph 19 where it says that you had at least
10 \$53.05 in your account, at a particular time, you
11 don't personally know whether that is correct or not?

12 A. I am sure when I made the purchase, I knew I
13 had money in the account. As to when it hit my
14 account, that I don't know.

15 Q. My question is, do you know where that --
16 the specific number of \$53.05 comes from?

17 A. That I don't know.

18 Q. Do you have a specific recollection, as you
19 sit here today, of that particular purchase you made
20 from Jackson Market in Culver City?

21 A. I know I made it -- no, I actually don't
22 know what day it was or -- obviously if I went through
23 everything, I would see what day it was.

24 Q. But my question is, as you are sitting here,
25 do you remember --

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1 A. No.

2 Q. -- going to the store that day and making
3 that purchase? Is it something you remember, or is it
4 something you just know happened because you have seen
5 paperwork since then that said you did it?

6 A. Well, I go there often. So I can't remember
7 specifically.

8 Q. So would it be fair to say that this
9 particular purchase you don't specifically recall
10 today?

11 A. Specifically, that I don't know.

12 Q. Do you specifically recall whether or not on
13 May 29, 2007 before you went to Jackson Market, you
14 checked your account balance?

15 A. That I don't know.

16 Q. Do you have any specific recollection of
17 checking your account balance on May 29, 2007?

18 A. That I don't know.

19 Q. Do you have any written record of whether or
20 not you checked your account balance on May 29, 2007?

21 A. I would not know.

22 Q. Do you have any specific recollection of
23 whether or not you checked your account balance on
24 May 30, 2007?

25 A. I don't know.

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1 Q. Do you have any specific recollection of
2 whether you checked your account balance on June 1,
3 2007?

4 A. I am sure I did.

5 Q. My question is, do you have any specific
6 recollection of having done that on June 1, 2007?

7 A. Specifically, no.

8 Q. Do you have any written record of having
9 checked your account balance on either May 30 or
10 June 1, 2007?

11 A. Specifically, no.

12 (Exhibit 141 was marked for identification.)

13 BY MS. WINNER:

14 Q. I would like to ask the reporter to mark as
15 Exhibit 141 a document entitled "Account Statement
16 May 24, through June 25, 2007," production
17 No. GUT 000500 to 504.

18 Ms. Walker, this is one of the documents
19 that was produced to us by your counsel in this
20 litigation.

21 Is this something that you provided to him
22 to produce?

23 A. Yes.

24 Q. This is -- I will also tell you this is the
25 only one of your account statements that was provided

1 First of all, Ms. Walker, if you would just
2 take a look at Exhibit 148 and tell me if you
3 recognize it.

4 A. I do.

5 Q. What do you recognize it as being?

6 A. My answers to -- to questions from
7 Wells Fargo.

8 Q. I think you repeated the word "to." So your
9 answers to questions from Wells Fargo. Is that what
10 you meant to say, not just the number "2"?

11 A. Right, yeah.

12 Q. The next to last page in this exhibit --
13 this is a page that's titled "Verification." Can you
14 see if you can find that.

15 A. Yes.

16 Q. Is that your signature on that page?

17 A. Yes, it is.

18 Q. Did you sign it on or about April 21?

19 A. Yes, I did.

20 Q. How did you come to sign it? Was it mailed
21 to you to sign, and you returned it?

22 A. These were scanned and emailed to me, and I
23 signed it and scanned it and emailed it back.

24 Q. Did you read this document before you signed
25 the verification?

1 A. Yes, I did.

2 Q. Had you reviewed drafts of it before that?

3 A. Not to my knowledge.

4 Q. At the time that you signed the
5 verification, did you believe these interrogatory
6 answers were accurate and complete?

7 A. There are two sets, right, of
8 interrogatories?

9 Q. Well, I am just asking you about the ones
10 that are in front of you. These particular answers at
11 the time you signed the verification for these
12 answers, did you believe that they were accurate and
13 complete?

14 A. Yes.

15 Q. As you sit here today, do you still believe
16 that these answers are accurate and complete?

17 A. Context.

18 Q. Feel free. Take as much time as you need.

19 A. These are correct.

20 Q. So are they still accurate and complete, as
21 far as you are aware?

22 A. Yes.

23 Q. Without giving me any details, just answer
24 "yes" or "no." Did you have assistance from your
25 attorneys in preparing the answers to these

1 Q. Did you ever read anything from Wells Fargo
2 that told you that?

3 A. No.

4 Q. Was there anything that you saw or heard
5 from anywhere else that led you to believe that?

6 A. No.

7 Q. Let's look at interrogatory No. 3.

8 A. Okay.

9 Q. First of all, if you would read the question
10 to yourself.

11 A. Okay.

12 Q. Then if you would read the first paragraph
13 of the response.

14 A. Okay.

15 Q. Is that paragraph, the first paragraph of
16 the response to interrogatory No. 3, accurate?

17 A. From the question, I don't understand what
18 the challenge statement is pertaining to.

19 Q. That's fair enough. Let me see. I think I
20 have a copy of the original interrogatory that has the
21 definition.

22 (Exhibit 149 was marked for identification.)

23 BY MS. WINNER:

24 Q. I would ask the reporter to mark as
25 Exhibit 149 a document entitled "Special

1 Interrogatories from Wells Fargo Bank, N.A. to
2 Plaintiff Veronica Gutierrez, Set One."

3 Ms. Walker, this is actually the version
4 that was given to one of the other plaintiffs, but the
5 one you got, I will represent to you, would have been
6 the same except the name would have been different.

7 A. Okay.

8 Q. There is a set of definitions that begins on
9 the second page and includes, I think, the one you
10 were expressing confusion about. So if you read any
11 of the definitions you think you have to, and then we
12 can go back to the answer I was asking you about.

13 A. And your question was?

14 Q. Is the first paragraph of your response to
15 interrogatory No. 3 accurate?

16 A. Yes.

17 Q. The response to interrogatory 3 then goes on
18 to say, "However, my counsel was aware of other
19 statements, and this response includes statements
20 known by my counsel."

21 Do you see that?

22 A. Yes.

23 Q. And then it goes on to list some other
24 statements.

25 A. Okay.

1 Q. I just want to confirm that I am correctly
2 understanding your response as saying that these are
3 other statements your counsel is aware of, but you
4 personally were not aware of those statements; is that
5 correct?

6 A. Correct.

7 Q. If you would then turn to the response to
8 interrogatory No. 5 and read that interrogatory and
9 the answer to yourself.

10 A. Okay.

11 Q. I want to ask you a couple questions about
12 this response. Again, I am just trying to get at what
13 you know and what you understand. I am not trying to
14 get into your counsel's head at this point.

15 A. Okay.

16 Q. There is a reference here to charging
17 overdraft fees for certain transactions, "When I had
18 sufficient funds to cover those transactions at the
19 time they were approved and posted on my online
20 account."

21 Do you see that?

22 A. Yes.

23 Q. What is your understanding of the term
24 "posted" as it is used there?

25 A. When it finally hits my account. So when it

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

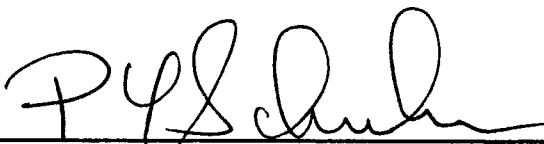
3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand
8 which was thereafter transcribed under my direction;
9 that the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing pertains to
12 the original transcript of a deposition in a Federal
13 Case, before completion of the proceedings, review of
14 the transcript [☒] was [☐] was not requested.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

20
21 Dated: JUN 20 2008

22 
23 _____
24 PATRICIA Y. SCHULER
25 CSR No. 11949


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Cash Accounts

Account	Available Balance	Related Activities
CHECKING XXX-XXX3609	\$5.99	Pay Your Bills Now
BUSINESS CHECKING XXX-XXX3625	\$7.99	
CHECKING XXX-XXX3633	\$3.52	Trade Commission Free Online
TF MMC XXX-XXX3365 ‡	\$5.51	Set Up Overdraft Protection
SAVINGS XXX-XXX2989	\$4.00	Create Savings Plan
Total	\$27.01	

Credit Accounts

Account	Outstanding Balance	Available Credit	Related Activities
VISA XXXX-XXXX-XXXX-0786	\$56.20	\$43.00	View Spending Report
Total	\$56.20	\$43.00	

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Account

CHECKING XXX-XXX3609

**CHECKING XXX-XXX3609**

Ending balance as of last business day (05/01/08) Direct Deposit Advance®	\$6.00
Available balance What's this?	\$5.99

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Date	Description	Deposits/ Additions	Withdrawals/ Subtractions
05/02/08	ONLINE TRANSFER REF #IBE2638G37		\$0.01 (pending)
02/13/08	ONLINE TRANSFER REF #IBETC83Y2C FROM BUSINESS CHECKING XXXXXX3625 ON 02/13/08	\$1.00	
02/12/08	ONLINE TRANSFER REF #IBEX89JM5M TO BUSINESS CHECKING XXXXXX3625 ON 02/12/08		\$1.00
02/11/08	ONLINE TRANSFER REF #IBEQG6GFLX FROM BUSINESS CHECKING XXXXXX3625 ON 02/11/08	\$1.00	
Totals		\$2.00	\$1.01

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WFB-G 01645

- **Available balance:** The most current picture of funds you have available for withdrawal. It reflects the latest balance based on transactions recorded to your account today including deposited funds, paid checks, withdrawals and point-of-sale purchases. (Please note that some transaction activity may not be immediately recorded to your account and will then not be reflected in the available balance. The first \$100 of ATM deposits will be included the same day in your available balance; the remaining funds will be added as items are processed and any holds are removed. Availability of branch deposits may vary; complete details on funds availability are reflected in our Funds Availability Policy).
- **Interest earned this period:** Interest that has been accrued but has not yet been paid to your account during your current statement cycle. *(For interest bearing accounts only.)*
- **Interest year-to-date:** The total interest that has been paid to your account from January 1st through the end of your last statement cycle. *(For interest bearing accounts only.)*

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1. Go to the **Balance Detail** section.
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Spending Summary as of 5/02/08 - All Payment Methods

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Click on column heading to sort

Category	MAY to Date	APR	MAR	12 Month Avg
Airlines / Transportation	\$0.00	\$44.26	\$150.00	\$123.66
Auto / Gas	\$0.00	\$230.18	\$426.62	\$257.83
Building Supply / Wholesale	\$0.00	\$106.97	\$89.09	\$138.78
Charity / Community Org.	\$0.00	\$736.75	\$312.00	\$606.75
Contractor / Business Services	\$0.00	\$0.00	\$0.00	\$60.05
Education	\$0.00	\$0.00	\$60.50	\$264.00
Entertainment	\$0.00	\$160.25	\$77.75	\$91.52
Groceries	\$0.00	\$926.27	\$537.19	\$720.15
Healthcare / Pharmacy	\$0.00	\$15.41	\$165.21	\$443.29
Household	\$0.00	\$1,096.81	\$56.21	\$231.79
Insurance / Financial Services	\$0.00	\$0.00	\$0.00	\$16.92
Lodging	\$0.00	\$9.57	\$0.00	\$825.50
Office Supply / Stationery	\$0.00	\$0.00	\$0.00	\$7.53
Personal Services	\$0.00	\$28.00	\$59.00	\$326.19
Postage / Delivery	\$0.00	\$0.00	\$0.00	\$18.04
Restaurants	\$0.00	\$462.67	\$298.92	\$340.42
Retail / Department Stores	\$0.00	\$526.85	\$809.59	\$668.88
Utilities / Telecom	\$0.00	\$286.83	\$384.03	\$346.60
Non-Categorized Transactions (We are unable to assign these transactions to a category above.)				
Categorize Now				
ATM Withdrawals	\$0.00	\$40.00	\$580.00	\$318.06
Cash Advances from Credit Cards	\$0.00	\$0.00	\$0.00	\$44.77
Checks Written ¹	\$0.00	\$3,773.00	\$7,827.86	\$5,031.02
Electronic Payments from Checking ¹	\$0.00	\$5,953.00	\$27,037.80	\$4,172.36
Non-Categorized Check Card Transactions	\$0.00	\$0.00	\$0.00	\$5.75
Non-Categorized Credit Card Transactions	\$0.00	\$12.60	\$0.50	\$17.30
Non-Categorized Online Bill Pay Payments ¹ What's this?	\$0.00	\$3,056.53	\$2,918.51	\$2,939.27
Subtotals by Payment Method				
Credit Card Spending	\$0.00	\$3,959.23	\$2,771.61	\$3,646.22
Check Card Spending	\$0.00	\$296.21	\$837.90	\$619.67
Other Checking Activity	\$0.00	\$9,726.00	\$34,865.66	\$10,290.63
Bill Pay Spending	\$0.00	\$3,484.50	\$3,325.61	\$3,459.93
Total Spending	\$0.00	\$17,465.94	\$41,800.78	\$18,016.45
Wells Fargo Transfers				
Transfers to other Wells Fargo Accounts	\$0.00	\$150.00	\$50.00	\$119.49
Payments to Loan and Credit Accounts	\$0.00	\$2,948.60	\$7,333.18	\$3,856.67

¹ This category may include payments to your Wells Fargo Credit Card

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Account

Checking XXX-XXX1852

Checking statements are available online for up to 7 years.

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Legal Notices regarding your account(s) will be available to view online through the "Available Online Until" date displayed above. Please review the information by that date, or download or print it for future reference.

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Wells Fargo will notify you when your account statement is available online. If we do not have a valid email address for you, we cannot provide this notice and will have to switch future online statements to paper statements via U.S. mail. As an online customer, you are responsible for notifying us if you change your email address. Please refer to the [Online Access Agreement](#) for details. If you receive both paper and online statements on an account, we will not notify you by email when your online statement is ready.

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Equal Housing Lender

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	From	Subject	Received ▼	Expires
<input type="checkbox"/>	Statements	! Wells Fargo Online Statement Notification	4/23/2008	7/22/2008
<input type="checkbox"/>	Statements	! Wells Fargo Online Statement Notification	4/12/2008	7/11/2008
<input type="checkbox"/>	Credit Card	Payment to your Wells Fargo VISA Acct. is due on 04/15/2008	4/8/2008	5/3/2008
<input type="checkbox"/>	Statements	! Wells Fargo Online Statement Notification	3/24/2008	6/22/2008
<input type="checkbox"/>	Statements	! Wells Fargo Online Statement Notification	3/11/2008	6/9/2008
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Set Up/Modify Alerts[? Help](#)**Security and General Alerts**

Description	Alerts View Sample	Actions
Alerts for username changes, password changes, and suspended access.	Username Change Password Change Access Suspended	Modify
Tax and IRA contribution reminders.	None Selected	Set Up

Personal Checking

Account	Alerts View Sample	Actions
Checking	Balance Threshold Overdraft Protection Advance	Modify

Personal Savings

Account	Alerts View Sample	Actions
Savings	Overdraft Protection Advance	Modify

Personal Credit Card

Account	Alerts View Sample	Actions
VISA	Payment Due	Modify

Cancel Alerts

Cancel Alerts for

Select One

[Save](#)

You cannot cancel the Security Alerts we send for username changes, password changes, and suspended access.

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Set Up/Modify Alerts[? Help](#)**Checking**

You will receive one email for each section below, however for wireless devices you will receive one alert for each transaction.

Click **Save** at the bottom of the page when you have set up the alert(s) you want.**Update Alerts****Tell me:**

- ☐ when a deposit has posted to my account.
☐ when a direct deposit has posted to my account.
☐ all the checks that posted to my account yesterday.
☐ when a withdrawal has posted to my account.
☐ my account balance each

Delivery Method

- ☒ Primary Email: _____@wellsfargo.com
☐ Secondary Email: _____@yahoo.com

REDACTED**Balance Alerts**Balance alerts trigger from the [available balance](#) at the close of the business day.

- ☒ Tell me when my account balance is below dollars.
☐ Tell me when my account balance is above dollars.

Delivery Method

- ☒ Primary Email: _____@wellsfargo.com
☐ Secondary Email: _____@yahoo.com

REDACTED**Check Tracking Alerts**

Sends an alert when specified checks have been posted to your account.
 Separate multiple check numbers with a comma.

Check Number(s)Tell me when the following checks have posted to my account **Delivery Method**

- ☒ Primary Email: _____@wellsfargo.com
☐ Secondary Email: _____@yahoo.com

REDACTED**Re-order Reminder Alert**

- ☐ Remind me to order checks after check number

Delivery Method

- ☒ Primary Email: _____@wellsfargo.com
☐ Secondary Email: _____@yahoo.com

REDACTED**Overdraft Protection Advance Alert**

- ☒ Tell me when an Overdraft Protection Advance is made to my account.

Delivery Method

- ☒ Primary Email: _____@wellsfargo.com
☐ Secondary Email: _____@yahoo.com

REDACTED[Cancel](#)[Add/Change Email](#)[Save](#)



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Subject	Wells Fargo Online Statement Notification
Received	April 12, 2008
From	Statements
	Contact Us

Dear Customer:

The statement for your Deposit Account Checking is now available to view online. To access your statement, please select the Statements & Documents tab or select the "View Online Statements" link on the Account Activity screen.

Sincerely,
Wells Fargo Online Customer Service

Protect yourself from fraud and identity theft. To learn more, go to our [Fraud Prevention Center](#).

If you have a question about your account, please select [Contact Us](#).

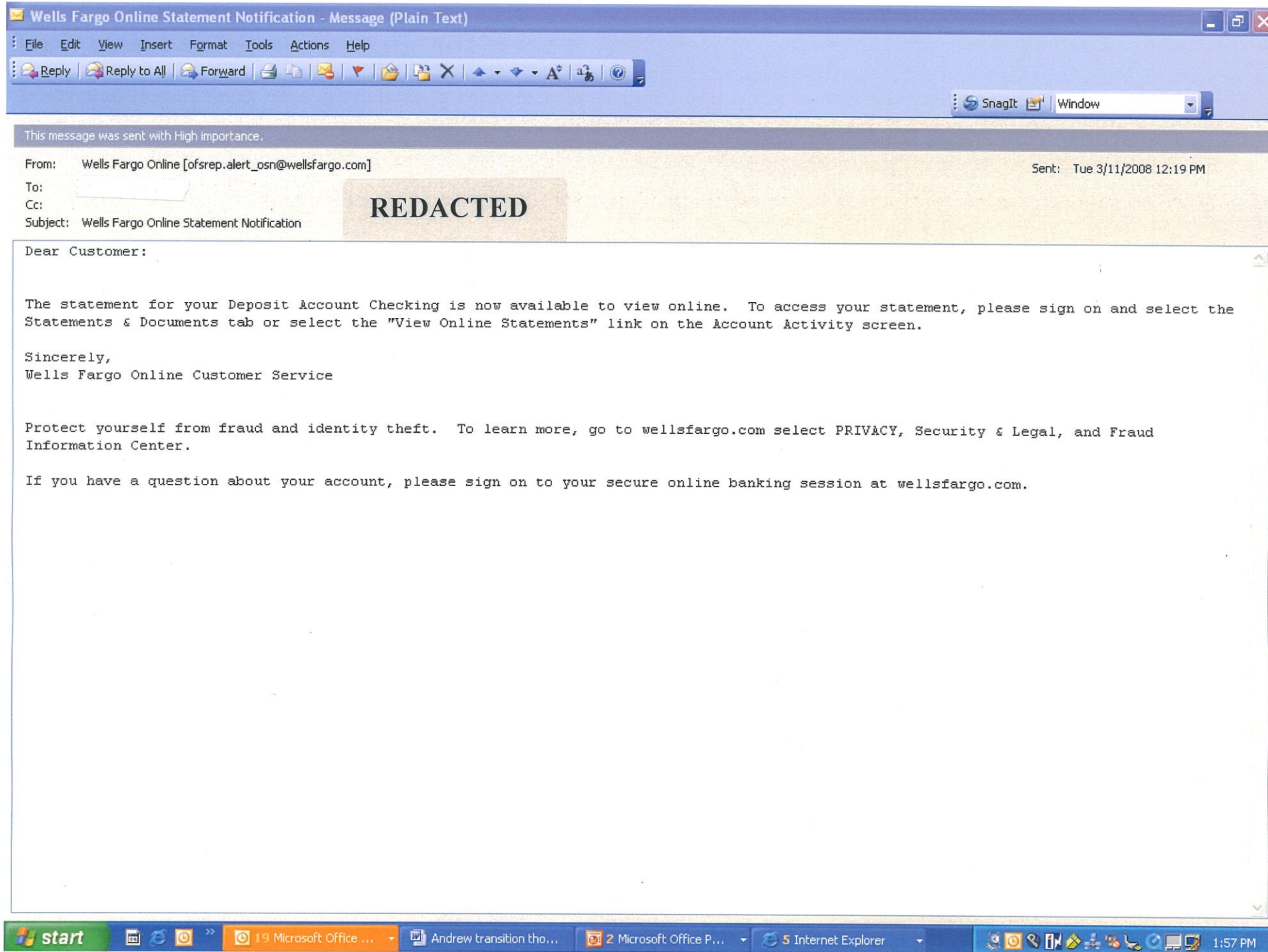
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